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8 **BEFORE THE**
9 **STATE BOARD OF OPTOMETRY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. CC 2010 129

13 **JOLYN WEI**
3801 Katella Avenue, No. 130
14 Los Alamitos, CA 90720

A C C U S A T I O N

15 Certificate of Registration to Practice
Optometry Number 13614

16 Respondent.

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19 Complainant alleges:

20 **PARTIES**

- 21 1. Mona Maggio (Complainant) brings this Accusation solely in her official capacity as
22 the Executive Officer of the State Board of Optometry, Department of Consumer Affairs.
23 2. On or about August 11, 2008, the State Board of Optometry (Board) issued
24 Certificate of Registration to Practice Optometry Number 13614 to Jolyn Wei (Respondent). The
25 Certificate was in full force and effect at all times relevant to the charges brought herein and will
26 expire on July 31, 2013, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 118, subdivision (b), provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 490 states, in pertinent part:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

6. Section 3090 states:

"Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter or any of the regulations adopted by the board. The board shall enforce and administer this article as to licenseholders, and the board shall have all the powers granted in this chapter for these purposes, including, but not limited to, investigating complaints from the

1 public, other licensees, health care facilities, other licensing agencies, or any other source
2 suggesting that an optometrist may be guilty of violating this chapter or any of the regulations
3 adopted by the board."

4 7. Section 3110 states, in pertinent part:

5 "The board may take action against any licensee who is charged with unprofessional
6 conduct, and may deny an application for a license if the applicant has committed unprofessional
7 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
8 limited to, the following:

9 "(a) Violating or attempting to violate, directly or indirectly assisting in or abetting the
10 violation of, or conspiring to violate any provision of this chapter or any of the rules and
11 regulations adopted by the board pursuant to this chapter.

12 "(f) Any action or conduct that would have warranted the denial of a license.

13 "(k) Conviction of a felony or of any offense substantially related to the qualifications,
14 functions, and duties of an optometrist, in which event the record of the conviction shall be
15 conclusive evidence thereof.

16 "(l) Administering to himself or herself any controlled substance or using any of the
17 dangerous drugs specified in Section 4022, or using alcoholic beverages to the extent, or in a
18 manner, as to be dangerous or injurious to the person applying for a license or holding a license
19 under this chapter, or to any other person, or to the public, or, to the extent that the use impairs
20 the ability of the person applying for or holding a license to conduct with safety to the public the
21 practice authorized by the license, or the conviction of a misdemeanor or felony involving the
22 use, consumption, or self administration of any of the substances referred to in this subdivision, or
23 any combination thereof.

24 REGULATORY PROVISIONS

25 8. California Code of Regulations, title 16, section 1517 states in pertinent part:

26 "For the purpose of denial, suspension, or revocation of the certificate of registration of an
27 optometrist pursuant to Division 1.5 (commencing with Section 475) of the Code, a crime or act
28 shall be considered to be substantially related to the qualifications, functions, and duties of an

1 optometrist if to a substantial degree it evidences present or potential unfitness of an optometrist
2 to perform the functions authorized by his/her certificate of registration in a manner consistent
3 with the public health, safety, or welfare.”

4 COST RECOVERY

5 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
6 administrative law judge to direct a licensee found to have committed a violation or violations of
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
8 enforcement of the case.

9 CAUSE FOR DISCIPLINE

10 (Convictions of a Substantially Related Crime)

11 10. Respondent is subject to disciplinary action under sections 3110, subdivisions (f), (k),
12 and (l) and section 490, in conjunction with California Code of Regulations, title 16, section
13 1517, in that Respondent has been convicted of a crime substantially related to the qualifications,
14 functions or duties of a licensed optometrist. The circumstances are as follows:

15 11. On or about June 15, 2011, after pleading nolo contendere, Respondent was convicted
16 of one misdemeanor count of violating Vehicle Code 23152, subdivision (b) [driving while
17 having .08% and more, by weight, of alcohol in her blood] in the criminal proceedings entitled
18 *The People of the State of California v. Jolyn Wei* (Super. Ct. Los Angeles County, 2010,
19 No.0AH05970). The Court sentenced Respondent to serve thirteen days in jail, pay a fine or
20 perform 12 days of community labor. Respondent was also required to complete courses in a
21 first- offender alcohol and other drug education and counseling program and pay restitution. The
22 Court further placed Respondent on probation for thirty-six months.

23 12. The circumstances surrounding the conviction are that on or about November 14,
24 2010, during a traffic stop at 0037 hours by the San Gabriel Police Department, Respondent was
25 contacted after, among other things, straddling several lanes. While speaking to Respondent, the
26 officer detected an odor of an alcoholic beverage and Respondent was observed to have
27 bloodshot and watery eyes. Respondent admitted to having consumed two Kirin beers that night
28 at dinner. During the investigation Respondent was performed a Field Sobriety Test, and


1 submitted to a breath test that resulted in blood-alcohol content level of .12%. Respondent was
2 subsequently arrested for violating Vehicle Code section 23152, subdivision (a) [driving while
3 under the influence of alcohol or drugs].

4 PRAYER

5 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
6 and that following the hearing, Board issue a decision:

- 7 1. Revoking or suspending Optometrist License Number 13614, issued to Respondent;
8 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
9 enforcement of this case, pursuant to section 125.3; and
10 3. Taking such other and further action as deemed necessary and proper.

11 DATED: 11.14.2012

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13 MONA MAGGIO
14 Executive Officer
15 State Board of Optometry
16 Department of Consumer Affairs
17 State of California
18 Complainant

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19 jz/tv (9/24/2012)